



Montenegro  
***Agency for the Prevention of Corruption***

Number: 03-01-89/4-20

In Podgorica, 14 January 2021

Pursuant to Article 54 of the Law on the Prevention of Corruption (Official Gazette of Montenegro 53/14 and 42/17), on 30 December 2020 the Agency for the Prevention of Corruption initiated, ex officio, the proceedings for determining the existence of threats to the public interest that indicates the existence of corruption and, on that basis, it hereby issues the following

**OPINION**

It has been found that the public interest has been threatened by Vladimir Leposavić, the Minister of Justice and Human and Minority Rights, indicating the existence of corruption, as he – as the Minister of Justice and Human and Minority Rights and as a member of the Judicial Council of Montenegro – on 10 December 2020, when he appeared on the “Club A” show on TV channel A1 Montenegro, exerted improper political influence on the autonomy and independence of the judiciary and violated the integrity of the Ministry of Justice and Human and Minority Rights of Montenegro as well as of the Judicial Council of Montenegro, by commenting on the judicial proceedings in which a final and enforceable judgment has not been made yet, assessing the validity of the evidence presented during the first-instance proceedings, stating that the proceedings are asking for retrial, all for the benefit of another, and in particular by stating that there is a possibility of an institutional response by adopting an Amnesty Law in case of conviction, all this within the meaning of Article 44 paragraph 2 in conjunction with Article 2 and Article 72 of the Law on the Prevention of Corruption.

The Agency for the Prevention of Corruption acts preventively in the fight against corruption in all fields, and the purpose of issuing an opinion on threats to the public interest is to create a positive impact on the consistent application of laws and ethical standards and principles, and, in that connection, it hereby issues the following recommendation:

Vladimir Leposavić, the Minister of Justice and Human and Minority Rights, is hereby imposed an obligation to refrain, without any further delay, from statements, acts and actions aimed at exertion of influence on independent judiciary and to consistently respect applicable legislation and international standards in all future analogous situations in the way that does not raise suspicions of undermining the integrity of state institutions.

Vladimir Leposavić, the Minister of Justice and Human and Minority Rights, is hereby imposed an obligation to submit a report on the actions taken with regard to the above-mentioned recommendation,

in accordance with Article 53 of the Law on the Prevention of Corruption, within 30 days from the date of receiving this Opinion.

### **Statement of Reasons**

On 30 December 2020 the Agency for the Prevention of Corruption initiated, *ex officio*, within the meaning of Article 54 of the Law on the Prevention of Corruption (Official Gazette of Montenegro 53/14 and 42/17), the proceedings for determining the existence of threats to the public interest by Vladimir Leposavić, the Minister of Justice and Human and Minority Rights, who by his statements made in the media when he appeared on the “Club A” show on TV channel A1 Montenegro, announced adoption of an Amnesty Law, if the Court of Appeals of Montenegro upholds judgments for attempted terrorism against the leaders of Democratic Front – Andrija Mandić and Milan Knežević, adding that “those proceedings ask for retrial” and by assessing the validity of individual evidence presented in the first-instance proceedings, by which he exerted improper political influence on the autonomy and independence of the judiciary and violated the integrity of the Ministry of Justice and Human and Minority Rights of Montenegro.

### **INVESTIGATION**

On 30 December 2020 the Agency for the Prevention of Corruption sent, acting *ex officio*, a request for submission of statement by the Minister of Justice and Human and Minority Rights.

Acting upon the request of the Agency, Vladimir Leposavić, the Minister of Justice and Human and Minority Rights, submitted statement No. 01-011/21-49 dated 5 January 2021, which states, *inter alia*, that “the cited observation is wrong and factually unfounded”, and that he did not announce the adoption of an Amnesty Law, but “only reminded of the existence of a (theoretical) possibility to adopt an Amnesty Law by the parliamentary majority”. His statement further declares that the statement made on the show, which “constitutes the exercise of a constitutionally guaranteed right to freedom of expression, is not unlawful, since its content refers only to the possibility provided for by the highest legal act.” The Minister also stated in his statement that “the request at hand is the result of someone's elementary ignorance, unprofessionalism, negligence, bad intentions or potential corruption”, and that “in the submitted request the Agency mentioned the wording of ‘improper political influence on the autonomy and independence of the judiciary’, which would lead to the conclusion that according to such view of the Agency, there are also proper political influences on the autonomy and independence of the judiciary, which once again confirms the level of superficiality with which this type of proceedings was initiated”.

In order to establish the fact properly and fully, during the investigation, the Agency assessed as evidence the statement submitted by the Minister of Justice and Human and Minority Rights No. 01-011/21-49 on 5 January 2021 and the content of the show “Club A” broadcast on TV channel A1 Montenegro on 10 December 2020.

We would like to note that the Agency for the Prevention of Corruption initiated the proceedings concerned exclusively in accordance with its competences, and on the basis of Article 54 of the Law on the Prevention of Corruption. The request for the submission of statement No. 03-01-89/2-20 dated 30 December 2020 addressed to the Minister of Justice and Human and Minority Rights in no way represents a “result of someone's elementary ignorance, unprofessionalism, negligence, bad intentions or potential corruption”, as stated by the Minister in his statement, but is entirely a consequence of the

use of official position and influence, as well as the media, in the way in which by his statements made in public, the Minister of Justice and Human and Minority Rights improperly influenced the ongoing judicial proceedings.

In the mentioned statement, the Minister has criticized the Agency's wording referring to an improper political influence on the independence and autonomy of judiciary, which in his opinion led to "the conclusion that according to such view of the Agency, there are also proper political influences on the autonomy and independence of the judiciary, which once again confirms the level of superficiality with which this type of proceedings was initiated". As a reminder, the wording "improper and undue external influence on the judicial proceedings" is contained in the **Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities**, of 17 November 2010, and **Recommendation No. R (94) 12 of the Council of Europe on the independence, efficiency and role of judges and the relevance of its standards and any other international standards to current problems in these fields**, so it cannot in any way confirm the "level of superficiality" of Agency and it is not about "such view of the Agency".

In the statement, the Minister has also referred to a constitutionally guaranteed right to freedom of expression, stating that his statement "is not unlawful, since its content refers only to the possibility provided for by the highest legal act." The Agency would like to note that the system of restrictions in the exercise of the right to freedom of expression is also defined in the Convention for the Protection of Human Rights and Fundamental Freedoms which states in Article 10 paragraph 2 that the **exercise of these freedoms carries with it duties and responsibilities**, in particular in view of the official position and influence of the Minister of Justice and Human and Minority Rights, and that it may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society for maintaining **the authority and impartiality of the judiciary**. In general, the view of the European Court of Human Rights on the criticism of judges and courts is based on the fact that courts have a fundamental role in a State based on the rule of law, that they should enjoy public confidence and should therefore be protected from unfounded attacks. However, the courts are not immune to criticism and monitoring of their work, which is why everyone has the right to express their views on judicial institutions, as long as their criticism does not cross the line.

Tolerating the views of individuals is an important component of any democratic political system. The exercise of these freedoms carries with it **duties and responsibilities**, especially in view of the official position and influence of Vladimir Leposavić as a Minister of Justice and Human and Minority Rights and as a Member of the Judicial Council of Montenegro. The accountability for the spoken word of a public office holder is greater than the accountability of an individual, especially having in mind that these are the institutions that should lay the foundation for an independent judiciary.

Having examined the content of the "Club A" show broadcast on 10 December 2020 on TV channel A1 Montenegro, it has been established that to the statement and question of the journalist Irena Tatar "You mentioned the coup, these days there is a lot of talk about it again for a reason, I believe you have seen and read those initiatives from the team of lawyers 'defence lawyers', and more specifically people who have been convicted and so on, and, just a reminder, we are waiting for the decision of the Court of Appeals, what exactly do you expect?", adding "I hope I'm not rude for asking this, and I understand the course of the investigation and your current position, if I am, I apologise", the Minister of Justice and Human and Minority Rights replied "Well, you see, since this is an ongoing case, I, according to all, let's

say, standards and criteria of my profession and what my position represents, should not comment on the case, however, I think we don't have the luxury of not commenting. The case is still in the decision-making process, at least at the higher instance, i.e. on appeal, I think that from the very beginning, at least in the part where the political leaders in the country are accused, that these proceedings have, simply, been full of things that are simply a legal scandal. So, now, witness appears to be a person who is not, first of all, worthy of being a witness or to be the only witness given the numerous circumstances of his life, work and so on. Further, even these witnesses change their testimonies and, then, on the other hand, there is a talk of evidence that is secret. You know, at one point they talked publicly about secret evidence, so, it's just that it's contradictory. Evidence is either public and can be presented publicly or it does not exist. Therefore, the trial is also public, so the evidence is public. There is no secret evidence. Of course, on the other hand, let's just see what decisions will be made. Let me remind you that in any case, there is a possibility of an institutional response to that as well. So, the parliamentary majority can also consider the adoption, I don't know, of an Amnesty Law". The Minister of Justice and Human and Minority Rights also added "those proceedings ask for retrial" and "I am commenting on this, as a lawyer" and "this is my personal opinion".

From the above, it is concluded that Vladimir Leposavić, the Minister of Justice and Human and Minority Rights, exerted improper political influence on the autonomy and independence of the judiciary, although he was aware, which he himself stated on the show, that such statement may have impact on the violation of constitutional principles, whereby he abused official position and influence within the meaning of Article 2 of the Law on the Prevention of Corruption, undermined the integrity of the public function he exercises and the reputation of the authority referred to in Article 72 of the Law on the Prevention of Corruption, violated the principle of independence of the judiciary guaranteed by Article 118 of the Constitution of Montenegro (Official Gazette of the Republic of Montenegro 66/06), violated Article 2 of the Law on Judicial Council and Judges (Official Gazette of Montenegro 11/15, 28/15 and 42/18) and violated a whole set of international documents laying down the position of judges, judicial principles and independence of the judiciary, such as: Sofia Declaration on judicial independence and accountability of 7 June 2013, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, adopted on 17 November 2010 under the terms of Article 15.b of the Statute of the Council of Europe, European Charter on the statute for judges of 10 July 1998, Recommendation No. R (94) 12 of the Council of Europe on the independence, efficiency and role of judges, United Nations Basic Principles on the Independence of the Judiciary (1985), 1982 IBA Minimum Standards of Judicial Independence, 2011 Vilnius Declaration on Challenges and Opportunities for the Judiciary in the Current Economic Climate, and Fundamental Principles – Magna Carta of Judges of the Consultative Council of European Judges of 17 December 2010. It is worth noting that the international standards relating to the independence of the judiciary are implemented in the Constitution of Montenegro as the highest legal act of the State and in the Law on Judicial Council and Judges.

Instead of respecting and strengthening the independence and impartiality of the judiciary, Vladimir Leposavić abused, by his statement, the position of a Minister of Justice and Human and Minority Rights referred to in Article 2 of the Law on the Prevention of Corruption, not taking into account the constitutional division of powers referred to in Article 11 of the Constitution of Montenegro, whereby he violated the principle of independence of the judiciary guaranteed by Article 118 of the Constitution of Montenegro. Article 2 of the Law on Judicial Council and Judges clearly states that no one shall influence judges in the exercise of judicial office. By the view expressed in his statement, the Minister of Justice and

Human and Minority Rights violated also Article 72 of the Law on the Prevention of Corruption by undermining the integrity of the Ministry of Justice and Human and Minority Rights of Montenegro and of the Judicial Council of Montenegro – institutions that are to work on the strengthening and promotion of the independence of the judiciary. Recommendation of the Council of Europe on judges, as regards commenting on judges' decisions, warns that **“the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal”**.

The independence of the judiciary is the foundation of the rule of law and is essential for the development of democracy and respect for human rights. The independence of the judiciary is protected by the Constitution of Montenegro, the above-mentioned national laws, international charters, recommendations, standards and principles. It is the duty of all government institutions to respect the independence of the judiciary. The UN Basic Principles on the Independence of the Judiciary emphasize that the judiciary shall act in accordance with the law and on the basis of facts, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. By his statement, the Minister of Justice and Human and Minority Rights made inappropriate and unjustified interference with the judicial process, thus also violating the integrity of the Ministry of Justice and Human and Minority Rights of Montenegro and of the Judicial Council of Montenegro. By commenting on the ongoing judicial proceedings, the Minister of Justice and Human and Minority Rights performed a direct attack and pressure on the Court of Appeals of Montenegro, sending an unambiguous message that if the mentioned court does not rule in a certain way, an “institutional response” will be prepared and measures will be taken by which that judgment will be called into question, adding that the “proceedings ask for retrial”.

## RELEVANT LEGISLATION

***The Constitution of Montenegro (Official Gazette of Montenegro 1/07) stipulates that:***

*“Montenegro shall guarantee and protect rights and liberties.*

*The rights and liberties shall be inviolable.*

*Everyone shall be obliged to respect the rights and liberties of others.” (Article 6)*

*“The power shall be regulated following the principle of the division of powers into the legislative, executive and judicial.*

*The legislative power shall be exercised by the Parliament, the executive power by the Government and the judicial by the courts. The power shall be limited by the Constitution and the law.*

*The relationship between powers shall be based on balance and mutual control. Montenegro shall be represented by the President of Montenegro.*

*Constitutionality and legality shall be protected by the Constitutional Court.*

*The army and the security services shall be subject to democratic and civil control.” (Article 11)*

*“Everyone shall have the right to equal protection of its rights and liberties.” (Article 19)*

*“The court is autonomous and independent.*

*The court shall rule on the basis of the Constitution, laws and ratified and published international treaties. Establishing court marshal and extraordinary courts shall be prohibited.” (Article 118)*

**The Law on the Prevention of Corruption (Official Gazette of Montenegro 53/14 and 42/17) stipulates that:**

*“Corruption is any abuse of official, business or social position or influence that is aimed at acquiring personal gain or for the benefit of another.” (Article 2)*

*“Public interest is the material and non-material interest for the good and prosperity of all citizens on equal terms;” (Article 6 paragraph 1 item 1)*

*“For the purpose of this Law, threatening the public interest shall mean a violation of regulations, ethical rules or the possibility of such a violation, which caused, causes or threatens to cause danger to life, health and safety of people and the environment, violation of human rights or material and non-material damage to the state or a legal or natural person, as well as an action that is aimed at preventing such a violation from being discovered.” (Article 44 paragraph 2)*

*“The authorized officer shall, ex officio, obtain data and information on the facts that are necessary for the conduct of the proceedings and decision-making process, the official records of which are kept by the competent state authorities, state administration bodies and municipalities, or public enterprises, companies, institutions or other legal and natural persons.” (Article 35 paragraph 2)*

*“Authorities, natural and legal persons referred to in paragraph 2 of this Article shall, within the period and in the manner established by the Agency, submit the requested data and information, or make available the required documentation in accordance with the law.” (Article 35 paragraph 3)*

*“For the purpose of this Law, threatening the public interest shall mean a violation of regulations, ethical rules or the possibility of such a violation, which caused, causes or threatens to cause danger to life, health and safety of people and the environment, violation of human rights or material and non-material damage to the state or a legal or natural person, as well as an action that is aimed at preventing such a violation from being discovered.” (Article 44 paragraph 2)*

*“On the basis of the procedure conducted based on the application referred to in Article 51 of this Law, the Agency shall prepare an opinion on the existence of threats to the public interest that indicate the existence of corruption.” (Article 52 paragraph 1)*

*“The Agency shall initiate the procedure for determining the existence of threats to the public interest that indicates the existence of corruption ex officio, on the basis of its own information.” (Article 54)*

*“Integrity shall mean a legitimate, independent, impartial, accountable and transparent performance of duties based on which the public officials and other employees of an authority protect their reputation and the reputation of the authority, ensure confidence of citizens in the performance of public functions and the operation of the authority and eliminate doubts about the possibility of the emergence and development of corruption.” (Article 72)*

**The Law on Judicial Council and Judges (Official Gazette of Montenegro 11/15, 28/15 and 42/18) stipulates that:**

*“Judges shall adjudicate and decide independently and autonomously.*

*The judicial office shall not be exercised under anyone’s influence.*

*No one shall influence judges in the exercise of judicial office.*

*Independence, autonomy, accountability and professionalism of courts and judges shall be provided by the Judicial Council.” (Article 2)*

**Sofia Declaration on judicial independence and accountability of 7 June 2013**

*“An independent and accountable judiciary is essential for the delivery of an efficient and effective system of justice for the benefit of the citizen and is an important feature of the rule of law in democratic societies.”*

**Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, 17 November 2010**

*“The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.” (§ 4)*

*“Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts.” (§ 5)*

*“The external independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts.” (§ 11)*

*“All necessary measures should be taken to respect, protect and promote the independence and impartiality of judges.” (§ 13)*

*“The law should provide for sanctions against persons seeking to influence judges in an improper manner.” (§ 14)*

*“Decisions of judges should not be subject to any revision other than appellate or re-opening proceedings, as provided for by law.” (§ 16)*

***“If commenting on judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal.” (§ 18)***

*“Judicial proceedings and matters concerning the administration of justice are of public interest. The right to information about judicial matters should, however, be exercised having regard to the limits imposed by judicial independence. The establishment of courts' spokespersons or press and communication services under the responsibility of the courts or under councils for the judiciary or other independent authorities is encouraged. Judges should exercise restraint in their relations with the media.” (§ 19)*

*“The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence.” (§ 22)*

*“Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.” (§ 26)*

*“The authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality.” (§ 32)*

*“Judges should act independently and impartially in all cases, ensuring that a fair hearing is given to all parties and, where necessary, explaining procedural matters. Judges should act and be seen to act without any improper external influence on the judicial proceedings.” (§ 60)*

### **European Charter on the statute for judges of 10 July 1998**

*“The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality. In each European State, the fundamental principles of the statute for judges are set out in internal norms at the highest level, and its rules in norms at least at the legislative level. Judges must refrain from any behaviour, action or expression of a kind effectively to affect confidence in their impartiality and their independence.”*

### **Recommendation No. R (94) 12 of the Council of Europe on the independence, efficiency and role of judges and the relevance of its standards and any other international standards to current problems in these fields**

*“Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial.” (§ 10)*

*“This independence must exist in relation to society generally and in relation to the particular parties to any dispute on which judges have to adjudicate. The judiciary is one of three basic and equal pillars in the modern democratic state. It has an important role and functions in relation to the other two pillars. It ensures that governments and the administration can be held to account for their actions, and, with regard to the legislature, it is involved in ensuring that duly enacted laws are enforced, and, to a greater or lesser extent, in ensuring that they comply with any relevant constitution or higher law (such as that of the European Union). To fulfil its role in these respects, the judiciary must be independent of these bodies, which involves freedom from inappropriate connections with and influence by these bodies. Independence thus serves as the guarantee of impartiality. This has implications, necessarily, for almost every aspect of a judge's career: from training to appointment and promotion and to disciplining.” (§ 11)*

*“Judicial independence presupposes total impartiality on the part of judges. When adjudicating between any parties, judges must be impartial, that is free from any connection, inclination or bias, which affects - or may be seen as affecting - their ability to adjudicate independently. In this regard, judicial independence is an elaboration of the fundamental principle that “no man may be judge in his own cause”. This principle also has significance well beyond that affecting the particular parties to any dispute. Not merely the parties to any particular dispute, but society as a whole must be able to trust the judiciary. A judge must thus not merely be free in fact from any inappropriate connection, bias or influence, he or she must also appear to a reasonable observer be free therefrom. Otherwise, confidence in the independence of the judiciary may be undermined.” (§ 12)*

*“The rationale of judicial independence, as stated above, provides a key by which to assess its practical implications – that is, the features which are necessary to secure it, and the mean by which it may be*



*secured, at a constitutional or lower legal level, as well as in day-to-day practice, in individual states. The focus of this opinion is upon the general institutional framework and guarantees securing judicial independence in society, rather than upon the principle requiring personal impartiality (both in fact and appearance) of the judge in any particular case. Although there is an overlap, it is proposed to address the latter topic in the context of the CCJE's examination of judicial conduct and standards of behaviour." (CCJE – Consultative Council of European Judges) (§ 13)*

*"The independence of the judiciary should be guaranteed by domestic standards at the highest possible level. Accordingly, States should include the concept of the independence of the judiciary either in their constitutions or among the fundamental principles acknowledged by countries which do not have any written constitution but in which respect for the independence of the judiciary is guaranteed by age-old culture and tradition. This marks the fundamental importance of independence, whilst acknowledging the special position of common law jurisdictions (England and Scotland in particular) with a long tradition of independence, but without written constitutions." (§ 14)*

*"Freedom from undue external influence constitutes a well-recognised general principle: see UN basic principles, paragraph 2; Recommendation No. R (94) 12, Principle I(2)(d), which continues: "The law should provide for sanctions against persons seeking to influence judges in any such manner". As general principles, freedom from undue influence and the need in extreme cases for sanctions are incontrovertible. Further, the CCJE has no reason to think that they are not appropriately provided for as such in the laws of member States. On the other hand, their operation in practice requires care, scrutiny and in some contexts political restraint. Discussions with and the understanding and support of judges from different States could prove valuable in this connection. The difficulty lies rather in deciding what constitutes undue influence, and in striking an appropriate balance between for example the need to protect the judicial process against distortion and pressure, whether from political, press or other sources, and the interests of open discussion of matters of public interest in public life and in a free press. Judges must accept that they are public figures and must not be too susceptible or of too fragile a constitution. The CCJE agreed that no alteration of the existing principle seems required, but that judges in different States could benefit from discussing together and exchanging information about particular situations." (§ 63)*

#### **United Nations Basic Principles on the Independence of the Judiciary (1985)**

*"The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."*

*"The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."*

*"There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law."*

#### **International Bar Association (IBA) Minimum Standards of Judicial Independence**

*“Individual judges should enjoy personal independence and substantive independence. Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control. Substantive independence means that in the discharge of his/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience.”*

***“The Legislature shall not pass legislation which retroactively reverses specific court decisions.”***

***Vilnius Declaration on Challenges and Opportunities for the Judiciary in the Current Economic Climate (8-10 June 2011)***

*“The independence of the Judiciary and of every single judge is to be preserved as a prerequisite for the delivery of a fair and impartial justice in protecting human rights and fundamental freedoms.”*

***Magna Carta of Judges (fundamental principles) of the Consultative Council of European Judges of 17 December 2010***

*“The judiciary is one of the three powers of any democratic state. Its mission is to guarantee the very existence of the Rule of Law and, thus, to ensure the proper application of the law in an impartial, just, fair and efficient manner.” (§ 1)*

*“Judicial independence and impartiality are essential prerequisites for the operation of justice.” (§ 2)*

*“Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the State, to those seeking justice, other judges and society in general, by means of national rules at the highest level. The State and each judge are responsible for promoting and protecting judicial independence.” (§ 3)*

***United Nations Convention against Corruption, 2003 (UNCAC)***

*“The purposes of this Convention are:*

*To promote integrity, accountability and proper management of public affairs and public property.” (Article 1)*

*“Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.” (Article 5)*

***Resolution (97) 24 on the twenty guiding principles for the fight against corruption***

*(Adopted by the Committee of Ministers on 6 November 1997 at the 101<sup>st</sup> session of the Committee of Ministers), elaborated by the Multidisciplinary Group on Corruption (GMC), sets out, inter alia, the following adopted principles:*

- *to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour;*
- *to ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct;*

- to ensure that the system of public liability or accountability takes account of the consequences of corrupt behaviour of public officials.

### **Anti-Corruption Authority (ACA) Standards**

#### **Standard 4 – Integrity and Impartiality**

*“Integrity may be defined as acting or being in accordance with the moral values, norms and rules, valid within the context in which one operates. In public administration, integrity refers to honesty and trustworthiness in the discharge of official duties, serving as an antithesis to corruption or the abuse of office for private gain.”*

#### **GrecoRC4(2019)27 Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors**

*“GRECO recommended (i) taking additional measures to strengthen the Judicial Council’s independence – both real and perceived – against undue political influence, including by abolishing the ex-officio participation of the Minister of Justice in the Council, by providing for no less than half of the Council’s membership to be composed of judges who are elected by their peers and by ensuring that the presiding function is given to one of those judicial members; (ii) establishing objective and measurable selection criteria for non-judicial members which would endorse their professional qualities and impartiality; and (iii) setting in place operational arrangements to avoid an over-concentration of powers in the same hands concerning the different functions to be performed by members of the Judicial Council.” Recommendation v. - 20*

## CONCLUSION

After it completed the investigation, and assessed the facts and circumstances, the Agency for the Prevention of Corruption has concluded that it has been established that there is a threat to the public interest that indicates the existence of corruption in the proceedings initiated, *ex officio*, by the Agency for the Prevention of Corruption against Vladimir Leposavić, the Minister of Justice and Human and Minority Rights, who is also a member of the Judicial Council of Montenegro.

According to its legal definition, integrity shall mean a legitimate, independent, impartial, accountable and transparent performance of duties based on which the public officials and other employees of an authority protect their reputation and the reputation of the authority, ensure confidence of citizens in the performance of public functions and the operation of the authority and eliminate doubts about the possibility of the emergence and development of corruption while threatening the public interest shall mean a violation of regulations, ethical rules or the possibility of such a violation, which caused, causes or threatens to cause danger to life, health and safety of people and the environment, violation of human rights or material and non-material damage to the State or a legal or natural person, as well as an action that is aimed at preventing such a violation from being discovered.

Having assessed the case files, the Agency for the Prevention of Corruption found that there is a threat to the public interest in the proceedings it initiated *ex officio*, which consists in the established fact that Vladimir Leposavić, the Minister of Justice and Human and Minority Rights and a member of the Judicial Council of Montenegro, by his statement made on the “Club A” show on TV channel A1 Montenegro, although he was aware that he was performing an attack on the integrity and independence of the judiciary, violated the constitutional provision prohibiting any influence on the exercise of judicial office, the Law on Judicial Council and Judges, a whole set of international documents laying down the position of judges, judicial principles and independence of the judiciary, and abused official position and influence within the meaning of Article 2 of the Law on the Prevention of Corruption and undermined the integrity of the public function he exercises and the reputation of the authority referred to in Article 72 of the Law on the Prevention of Corruption because as the Minister of Justice and Human and Minority Rights and as a member of the Judicial Council of Montenegro, on 10 December 2020, when he appeared on the “Club A” show on TV channel A1 Montenegro, he exerted improper political influence on the autonomy and independence of the judiciary and violated the integrity of the Ministry of Justice and Human and Minority Rights of Montenegro as well as of the Judicial Council of Montenegro, by commenting on the judicial proceedings in which a final and enforceable judgment has not been made yet, assessing the validity of the evidence presented during the first-instance proceedings, stating that the proceedings are asking for retrial, all for the benefit of another, and in particular by stating that there is a possibility of an institutional response by adopting an Amnesty Law in case of conviction.

Judges shall adjudicate and decide on the basis of the constitution, laws and other general acts, ratified international treaties, and generally accepted rules of international law. The independence of the judiciary must exist in relation to the society as a whole, other branches of government, as well as in relation to the parties in any dispute on which judges are to rule.

The state of Montenegro guarantees, by the Constitution and law, the independence of the judiciary in accordance with international standards, and it is the obligation of all governmental and other institutions

to respect and protect the independence of the judiciary, without any improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

The Agency for the Prevention of Corruption acts preventively in the fight against corruption in all fields, and the purpose of issuing an opinion on threatening of public interest is to create a positive impact on the consistent application of laws and ethical standards and principles, and, in that connection, it hereby issues the following recommendation:

**Vladimir Lepasavić, the Minister of Justice and Human and Minority Rights, is hereby imposed an obligation to refrain, without any further delay, from statements, acts and actions aimed at exertion of influence on independent judiciary and to consistently respect applicable legislation and international standards in all future analogous situations in the way that does not raise suspicions of undermining the integrity of state institutions.**

**Vladimir Lepasavić, the Minister of Justice and Human and Minority Rights, is hereby imposed an obligation to submit a report on the actions taken with regard to the above-mentioned recommendation, in accordance with Article 53 of the Law on the Prevention of Corruption, within 30 days from the date of receiving this Opinion.**

**DIRECTOR  
Jelena Perović**